IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

| DEUTSCHE BANK NATIONAL TRUST | § | |
|------------------------------|---|---------------------------------|
| COMPANY, AS TRUSTEE FOR LONG | § | |
| BEACH MORTGAGE TRUST 2006-2, | § | |
| ITS SUCCESSORS AND ASSIGNS, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil Action No. 3:10-CV-1562-O |
| | § | |
| MARCUS SAWYER | § | |
| AND/OR ALL OTHER OCCUPANTS, | § | |
| | § | |
| Defendant. | § | |

ORDER ADOPTING THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court is Plaintiff's Motion to Remand (ECF No. 5), filed August 19, 2010. On August 20, 2010, Plaintiff's motion was automatically referred to United States Magistrate Judge Ramirez for a recommendation or determination. *See* ECF No. 6. On October 12, 2010, Magistrate Judge Ramirez issued her Findings, Conclusions, and Recommendation (ECF No. 9) that Plaintiff's motion be granted and this case be remanded to Dallas County Court at Law No. 5. Defendant objects to the Magistrate Judge's findings. ECF No. 10.

Defendants filed notice to remove the case under 28 U.S.C. § 1331 on the basis of diversity jurisdiction. Unnamed Defendant Talance Sawyer states that the diversity of citizenship and amount in controversy requirements of § 1331 are fulfilled. Def. Obj. FCR 2-4, ECF No. 10. While that may be the case, as the magistrate judge pointed out, the Defendant failed to file the notice to remove in a timely manner and did not have the consent of all defendants. FCR 3-6, ECF No. 9.

A defendant has thirty days from service of the initial pleading to remove a case from state

court to federal court. 28 U.S.C. § 1446(b). Although Defendant states all occupants were served

on July 28, 2010, attachments to the notice of removal show the court issued an eviction citation for

the Defendant that was executed on June 28, 2010 and included the original petition. App. in Supp.

Notice of Removal 28, ECF No. 2. Defendant filed notice of removal on August 11, 2010, two

weeks past the deadline. See ECF No. 1. Additionally, all defendants must consent for removal to

federal court. See Getty Oil Corp. v. Ins. Co. Of N. Am., 841 F.2d 1254, 1262-63 (5th Cir. 1988).

Defendant fails to respond to Magistrate Judge Ramirez's finding that Marcus Sawyer did not

consent to the removal filed by unnamed Defendant Talance Sawyer.

After conducting a review of the pleadings, files and records in this case, the Findings,

Conclusions, and Recommendation of the United States Magistrate Judge (ECF No. 9), and

objections of the Defendant (ECF No. 10), this Court is of the opinion that the Findings and

Recommendation of the Magistrate Judge are correct, and they are hereby accepted as the Findings

of the Court. Accordingly, Plaintiff's Motion to Remand (ECF No. 5) is GRANTED and this case

is remanded to Dallas County Court at Law No. 5.

SO ORDERED on this 1st day of November, 2010.

Reed O'Connor

UNITED STATES DISTRICT JUDGE